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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/604,298 | 07/09/2003 | Alfons Sieverding | 302220 | 1297 |
| 30008 | 7590 | 12/20/2004 | EXAMINER | |
| GUDRUN E. HUCKETT DRAUDT LONSSTR. 53 WUPPERTAL, 42289 GERMANY | | | VALENTI, ANDREA M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3643 | |

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|------------------------|---------------------|
| Advisory Action | Application No. | Applicant(s) |
| | 10/604,298 | SIEVERDING, ALFONS |
| | Examiner | Art Unit |
| | Andrea M. Valenti | 3643 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

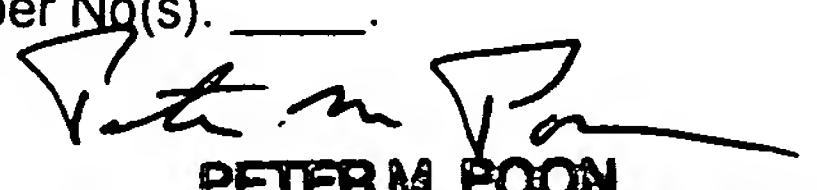
Claim(s) rejected: 1-14.

Claim(s) withdrawn from consideration: _____.

8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. Other: See Continuation Sheet


PETER M. POON
SUPERVISORY PATENT EXAMINER

12/17/04

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 3,288,340 to Shapiro et al.

Regarding Claims 1 and 11-14, Shapiro teaches a stackable deep-drawn plastic plant pot container comprising: an at least slightly conical wall (Shapiro #28) and a bottom (Shapiro #26) connected to the conical wall (Shapiro #28), wherein the conical wall has a rim area (Shapiro Fig. 6 #42a) remote from the bottom, wherein the rim area is comprised of a first ledge (Shapiro #42a) and a second ledge (Shapiro #40a), located below the first ledge, wherein the rim area comprises an intermediate support area (Shapiro #38a) having a first end connected to the first ledge (Shapiro #42a) and having a second end connected to the second ledge (Shapiro #40a), wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges (Shapiro Fig. 8), wherein the first and second ledges in a plan view onto the rim area, at least partially overlap (Shapiro Fig. 6 and 8), wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge (Shapiro Fig. 6) and the intermediate support area (Shapiro #38a) having a wave shape at least at one of the first and second ends which softens a cross-sectional stiffness of

the rim area for improved removal from the mold (Shapiro Fig. 6 #46a and 45a and Col. 4 Line 29-40).

Regarding Claim 2, Shapiro teaches the wave shape of the intermediate support area is a rectangular wave shape (Shapiro Fig. 6 #46a and 45a).

Regarding Claim 3, Shapiro teaches the wave shape forms divisions in the circumferential direction which are only insignificantly greater than dimensions of the intermediate support area (Shapiro Fig. 6 and 2).

Regarding Claim 4, Shapiro teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Shapiro Fig. 6 #46a).

Regarding Claim 5, Shapiro teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Shapiro Fig. 2 and 6).

Regarding Claim 6, Shapiro teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Shapiro Fig. 8).

Regarding Claim 7, Shapiro teaches the second ledge (Shapiro #40a) has a contour matching the wave shape of the intermediate support area and overlaps in a plan view radially at least most of a radial width of the first ledge (Shapiro Fig. 6).

Regarding Claim 8, Shapiro teaches the first ledge (Shapiro #43a) of the rim area forms an upper flange rim (Shapiro #36a).

Regarding Claim 10, Shapiro teaches the upper flange rim has an outer downwardly bent edge (Shapiro #36a).

Claims 1, 3-8 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Des. 256,682 to Lee et al.

Regarding Claims 1 and 11-14, Lee teaches a stackable deep-drawn plastic plant pot container comprising: an at least slightly conical wall and a bottom connected to the conical wall (Lee Fig. 2 and 3), wherein the conical wall has a rim area (Lee Fig. 5) remote from the bottom, wherein the rim area is comprised of a first ledge and a second ledge (Lee Fig. 5), located below the first ledge, wherein the rim area comprises an intermediate support area having a first end connected to the first ledge and having a second end connected to the second ledge (Lee Fig. 5), wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges, wherein the first and second ledges in a plan view onto the rim area, at least partially overlap, wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge; and the intermediate support area (Lee Fig. 1 and 4) having a wave shape at least at one of the first and second ends which softens a cross-sectional stiffness of the rim area for improved removal from a deep drawn mold.

Regarding Claim 3, Lee teaches the wave shape forms divisions in the circumferential direction which are only insignificantly greater than dimensions of the intermediate support area (Lee Fig. 4).

Regarding Claim 4, Lee teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Lee Fig. 1).

Regarding Claim 5, Lee teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Lee Fig. 1).

Regarding Claim 6, Lee inherently teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Lee Fig. 5).

Regarding Claim 7, Lee teaches the second ledge has a contour matching the wave shape of the intermediate support area and overlaps in a plan view radially at least most of a radial width of the first ledge (Lee Fig. 5).

Regarding Claim 8, Lee teaches the first ledge of the rim area forms an upper flange rim (Lee Fig. 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,288,340 to Shapiro et al in view of United Kingdom Patent 859,964 to Pharc-Smith.

Regarding Claim 9, Shapiro is silent on the upper flange rim has a wall thickness that is greater than a wall thickness of remaining parts of the plastic container. However, Pharc-Smith teaches a plant pot rim with a greater thickness than the container thickness (Pharc-Smith Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the

time of the invention since the modification is merely an engineering design choice selected to enhance the strength of the rim to prevent undesirable bending when transporting a full/heavy container.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 256,682 to Lee et al

Regarding Claim 2, Lee is silent on the wave shape of the intermediate support area is a rectangular wave shape. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an artistic/aesthetic design choice to enhance visual appeal.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 256,682 to Lee et al in view of United Kingdom Patent 859,964 to Pharce-Smith.

Regarding Claim 9, Lee is silent on the upper flange rim has a wall thickness that is greater than a wall thickness of remaining parts of the plastic container. However, Pharce-Smith teaches a plant pot rim with a greater thickness than the container thickness (Pharce-Smith Fig. 4 #4). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an engineering design choice selected to enhance the strength of the rim to prevent undesirable bending when transporting a full/heavy container.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EP 65108 A1 to Berlit in view of U.S. Patent No. 3,045,887 to Caine.

Regarding Claims 1 and 11-14, Berlit teaches a stackable deep-drawn plastic plant pot container comprising: an at least slightly conical wall (Berlit #32) and a bottom (Berlti #14) connected to the conical wall (Berlit #32), wherein the conical wall has a rim area (Berlit #22 and 23) remote from the bottom, wherein the rim area is comprised of a first ledge (Berlit #22) and a second ledge (Berlit #24), located below the first ledge, wherein the rim area comprises an intermediate support area (Berlit #21) having a first end connected to the first ledge (Berlit #22) and having a second end connected to the second ledge (Berlit #24), wherein a stacking spacing of the deep-drawn plastic container, when stacked in a stack, is determined by the first and second ledges, wherein the first and second ledges in a plan view onto the rim area, at least partially overlap (Berlit Fig. 1), wherein the intermediate support area has a first width at the first ledge that is smaller than a second width at the second ledge.

Berlit is silent on the intermediate support area (Berlit #21) having a wave shape at least at one of the first and second ends. However, Cain teaches a plant pot container with an intermediate support area having a wave shape (Cain #262) which softens a cross-sectional stiffness of the rim. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since for the nesting advantages taught by Cain (Cain Col. 2 line 45-68).

Regarding Claim 2, Berlit as modified teaches the wave shape of the intermediate support area is a rectangular wave shape (Cain Fig. 3).

Regarding Claim 3, Berlit as modified teaches the wave shape forms divisions in the circumferential direction which are only insignificantly greater than dimensions of the intermediate support area (Cain Fig. 3).

Regarding Claim 4, Berlit as modified teaches the wave shape is continued across the intermediate support area at least with reduced amplitude from the one of the first and second ends to the other of the first and second ends (Cain Col. 2 line 51-52).

Regarding Claim 5, Berlit as modified teaches the intermediate support area within the wave shape has primarily vertically extending surfaces or lines (Cain Fig. 3 #262).

Regarding Claim 6, Berlit as modified inherently teaches at least one of the first and second ledges forms a centering means for a play-reduced centering relative to a neighboring deep-drawn plastic container when stacked in a stack (Berlit #24 and 22).

Regarding Claim 7, Berlit as modified teaches the second ledge (Berlit #24) has a contour matching the wave shape of the intermediate support area and overlaps in a plan view radially at least most of a radial width of the first ledge (Berlit #22).

Regarding Claim 8, Berlit as modified teaches the first ledge (Berlit #22) of the rim area forms an upper flange rim (Berlit #23).

Regarding Claim 9, Berlit as modified the upper flange rim has a wall thickness that is greater than a wall thickness of remaining parts of the plastic container (Cain Col. 2 line 69-71).

Regarding Claim 10, Berlit as modified teaches the upper flange rim has an outer downwardly bent edge (Berlit #23)..

Response to Arguments

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent Des. 65,842 and U.S. Patent Des. 241,764.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Andrea M. Valenti
Patent Examiner
Art Unit 3643

13 December 2004

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

Continuation of 2. NOTE: By placing the previously rejected dependent claims into the independent claim would necessitate the examiner to conduct further consideration and does not immediately place the application in condition for allowance. Examiner maintain that the teachings cited in the Final Rejection teach each and every structural limitation claimed by applicant.

Continuation of 10. Other: Examiner provided a copy of the Final Rejection because the examiner inadvertently referred to the teachings of Pharche-Smith as being a U.S. Patent, but it is a United Kingdom Patent as correctly indicated on Form 892..